United States Department of Labor Employees' Compensation Appeals Board

J.J., Appellant and DEPARTMENT OF THE AIR FORCE, DAVIS-)))) Docket No. 18-0137) Issued: November 1, 2018
MONTHAN AIR FORCE BASE, Tucson, AZ, Employer)))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge ALEC J. KOROMILAS, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On October 24, 2017 appellant filed a timely appeal from a May 9, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-0137.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*, the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. In the instant case, appellant filed an occupational disease claim (Form CA-2) alleging that work exposure to fumes and carcinogenic chemicals from 1981 to 1995 caused squamous cell carcinoma of the head and neck. On January 9, 2003 OWCP accepted squamous cell carcinoma of the neck and scalp. Dr. Rucker requested authorization for a carotid stent. Following referral to a medical adviser, by decision dated December 13, 2016, OWCP denied Dr. Rucker's request for authorization. On February 10, 2017 appellant requested reconsideration. By decision dated December 13, 2016, OWCP assigned the weight of the medical

¹ 41 ECAB 548 (1990).

evidence to the opinion of its medical adviser and denied medical authorization for the requested procedure.

On February 10, 2017 appellant requested reconsideration. He noted in an attached February 6, 2017 statement that a similar procedure had been approved for his left carotid artery. Also attached was a January 5, 2017 procedure note in which Dr. Rucker reported that he had performed stent placement and balloon angioplasty to the proximal right internal carotid artery. Dr. Rucker related that indications for the procedure were that appellant had severe radiation-induced stenosis of the proximal right internal carotid artery that was symptomatic, characterized by presyncopal episodes and visual changes.

In a nonmerit decision dated May 9, 2017, OWCP denied appellant's February 10, 2017 request for reconsideration. It noted that the only evidence reviewed on reconsideration was appellant's February 6, 2017 narrative statement and that "[n]o other evidence was submitted in support of [the] claim."

The Board finds that, as OWCP failed to review the January 5, 2017 report of Dr. Rucker, the case will be remanded to OWCP to enable a proper consideration of the evidence of record at the time of its May 9, 2017 nonmerit decision. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on appellant's request for reconsideration of the merits of his claim.

IT IS HEREBY ORDERED THAT the May 9, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: November 1, 2018 Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board